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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,636	02/18/2004	Theodore R. Zeigler	000002-003	9100

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WRB-IP LLP
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ALEXANDRIA, VA 22314

EXAMINER

BARTOSIK, ANTHONY N

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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11/03/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/779,636	Applicant(s) ZEIGLER, THEODORE R.	
	Examiner ANTHONY N. BARTOSIK	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 32 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19, 23-42 and 44 is/are rejected.
- 7) ☒ Claim(s) 16-18, 20-22 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Non-Final Rejection based upon Applicant's Remarks of July 28, 2008.

Response to Arguments

1. Applicant's arguments filed July 28, 2008, with respect to the rejection(s) of claim(s) 1-42 under 35 USC § 102 and 35 USC § 103, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Esser et al.

Claim Objections

2. Claims 9 and 10 are objected to because of the following informalities: claims 9 and 10 contain the language "a cover." Based upon these claim's dependency on claim 8, which sets forth the antecedent basis for the cover, it appears the cover referred to in claims 9 and 10 is the cover of 8 and should therefore be recited as "the cover." If the cover in claims 9 and 10 are intended to be an additional cover, language directed to a "second cover" would be preferred. Appropriate correction is required.

3. Claim 37 recites the limitation "tension members." There is insufficient antecedent basis for the plurality of the tension member in the claim.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 requires at least one lateral scissor assembly being disposed at each end of the scissor assembly, therefore actually requiring at least two separate lateral scissor assemblies. Since it requires two lateral scissor assemblies, the claim cannot function with just one. Amending the language, for example, to "wherein the at least one lateral scissor assembly includes two lateral scissor assemblies disposed at each end of each scissor assembly," would be sufficient to overcome the rejection. Any language setting forth that there are actually at least two lateral scissor assemblies would be sufficient.

6. The previous rejection of claim 7 is removed. The Examiner misconstrued the claim language.

Claim Rejections - 35 USC § 102

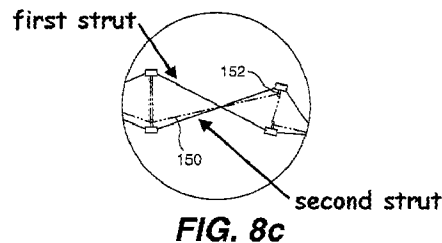
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. **Claims 1, 2, 23-29, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Esser et al. (US 5,943,837) (hereinafter "Esser").**



9. In Re claim 1, Figures 8a-8d of Esser disclose at least one scissor assembly comprising a first and a second strut, the first and the second strut each having first end second ends and being pivotably attached to each other such that the scissor assembly is movable between a folded position, in which the first end of the first strut and the second end of the second strut are substantially adjacent, and an expanded position;

a first spacer (154) disposed between the first end of the first strut and the first end of the second strut when the scissor assembly is in the expanded position;

a second spacer (154) disposed between the second end of the first strut and the second end of

the second strut when the scissor assembly is in the expanded position; and a tension member (150) connected to the first and second struts, wherein the tension member (150) is arranged such that the scissor assembly is moved from the folded position when there is slack in the tension member to the expanded position when the slack in the tension member (150) is taken up.

The Examiner is interpreting the spacer (154) of Esser to be disposed as claimed, due to its location between the struts and by the fact that the claim does not

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require any further structural limitations. Amending the claim to include further structural limitations to the spacer would be viewed favorably.

The Examiner further notes that the language of a “folded position” and an expanded position” does not necessarily limit the claim language to mean that the structure is completely folded or expanded.

10. In Re claim 2, Figure 8a of Esser discloses the claimed limitations.

11. In Re claims 23-29, Figures 8a-8d of Esser disclose the claimed limitations.

12. In Re claim 33, Figures 8a-8d of Esser disclose the claimed limitations (see the rejection to claim 1). Regarding the limitation of “defined by a spacer,” in taking the broadest reasonable interpretation it can be interpreted that the slack of Esser can be taken up to a distance defined by the spacer (154). Amending the claim to include language that further defines the distance and the spacer would be given favorable consideration.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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14. Claims 3-10, 12, 15, 16, 35-40, 42, and 44, are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser.

15. In Re claim 3, Figures 8a-8d disclose the claimed limitation except for specifically showing at least one lateral scissor assembly. Figure 1 of Esser discloses the prior art in collapsible structures which shows that when erecting collapsible structures at least one lateral scissor assemblies (26) are used to join the structure. It therefore would have been obvious to one skilled in the art to utilize a lateral scissor assembly as disclosed in the prior art of Esser to join the front and back collapsible structures.

16. In Re claims 4-7, the teachings of Esser render the claimed limitations obvious.

17. In Re claim 8, Figure 1 of Esser teaches that it is well known in the prior art to use a cover (22) (Col. 1 Ln. 17) and would therefore be obvious to one skilled in the art at the time of the invention.

18. In Re claim 9, Figure 1 of Esser teaches that it is well known in the prior art to use a cover (22) on the outer side (Col. 1 Ln. 17) and would therefore be obvious to one skilled in the art at the time of the invention.

19. In Re claim 10, Figure 1 of Esser teaches that it is well known in the prior art to use a cover (24) on the inner side (Col. 1 Ln. 18) and would therefore be obvious to one skilled in the art at the time of the invention.

20. In Re claim 12, Esser teaches the counterpoint connection.

21. In Re claim 15, Figure 8d of Esser discloses a bar, but not a tube, i.e. a hollow portion. One skilled in the art would, however, find it obvious to construct the spacer (154) of Esser as a tube in order to save weight.

22. In Re claim 19, Figure 8a of Esser discloses the tension member (150) being connected at the center inside the structure. Moving the connection point to the end of at least one scissor assembly would have been obvious to one skilled in the art. Moving the connecting position (151) to the frame would provide for a stronger connection allowing the tension member to be tied to the frame, and yet not change the purpose of the connection.

23. In Re claims 35-40, 42, and 44, the combination renders the claimed method steps obvious as such a method would be an obvious manner of erecting the structure.

24. Claims 11 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Kemeny (US 4,942,686).

25. In Re claim 11, Esser teaches the claimed limitations except for the telescoping struts limitation. Figure 8 of Kemeny discloses a telescoping strut in use with a collapsible structure. Although Kemeny teaches the use of a telescoping strut in order

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to curve the structure, one of ordinary skill in the art would appreciate the other advantages of utilizing a telescoping strut. Such an advantage would be that the overall fully collapsed structure would be reduced in size, making it easier to manage.

26. In Re claim 41, the combination renders the claimed method steps obvious as such a method would be an obvious manner of erecting the structure.

27. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Zeigler (US 5,651,228) (hereinafter "Zeigler '228").

28. In Re claims 13 and 14, Esser teaches the claimed invention except for connecting the struts at points offset from the center points. Figures 2A-2D and Col. 5 Lines 47-64 of Zeigler '228 teach offsetting the connection points to make a curved structure. It would have been obvious to one skilled in the art at the time of the invention to offset the pivot point of the struts in Esser as taught by Zeigler '228 in order to make the structure more adapted to form an arch.

29. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Zeigler (US 4,437,275) (hereinafter "Zeigler '275").

30. In Re claim 30, Esser teaches the claimed invention except for the sliding scissor assembly. Figure 5 and Col. 10-25 of Zeigler '275 teach the at least one scissor assembly including at least one sliding scissor assembly, first and second struts of the

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sliding scissor assembly being pivotably connected and slidable relative to one another to enable heavy struts to collapse in the proper manner, where struts in the original configuration would not otherwise collapse. This would allow for a heavier strut to be used resulting in a stronger shelter. It would have been obvious to one skilled in the art at the time of the invention to modify the struts of Esser to include the connection as taught in Zeigler '275 in order to allow a heavier strut to be used and a stronger shelter built.

31. In Re claim 31, Figure 5 of Zeigler '275 discloses at least one of the first and second struts of the at least one sliding scissor assembly including a longitudinal groove, a pivot pin (102) extending through the longitudinal groove (98 or 100) pivotably and slidably connecting (92) the first and second struts of the at least one sliding scissor assembly.

Allowable Subject Matter

32. Claims 16-18, 20-22, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik
Examiner
Art Unit 3635
